

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 961, 962 963 & 964 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

Cri.Appeal no.961/1990

STATE OF GUJARAT

Versus

C L SAJNANI

Appearances: In Cr.Appeals nos.961, 963 & 964 of 1990

Mr. K.P. Raval, A.P.P. for the appellant.

MR SR SHAH for Respondent No. 1

Appearances : In Cri.Appeal no.962 of 1990

Mr. K.P. Raval, A.P.P. for the appellant.

Mr. T.L. Kubchandani for the respondent.

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 03/04/97

ORAL JUDGEMENT

As common questions of law and facts arise in all
these appeals they are disposed of by this common

judgment.

Heard learned A.P.P Shri K.P. Raval for the appellant in all the matters and learned Advocate Shri S.R.Shah for the respondent in all the matters, except Criminal Appeal no.962/97 where learned Advocate Mr. T.L. Kubchandani is absent on call.

Respondents in all these appeals are the Principals of the respective schools situated in Gandhidham. According to the complainant-State the said schools had vacancies for the post of Teacher which they did not notify to the Employment Exchange as required under Section 4(2) of the Employment Exchange(Compulsory Notification of Vacancies) Act,1959(hereinafter referred to as the "Act" for short). Non compliance thereof is punishable under Section 7 of the said Act. On summons being served, the accused gave an application in all the matters that they be discharged in as much as provisions of the Act did not apply as the institution is an educational institution run by the Charitable Trust. The First Joint Judicial Magistrate, First Class, Bhuj accepted the contention and discharged the accused by his judgment and order dated 20th August, 1990. This judgment and order of discharge is under challenge in this appeal by the State of Gujarat.

Learned A.P.P. Mr. Raval contended before this Court that the institution of the accused squarely falls within the definition of clause (e) read with clause (g) of Section 2 of the Act and he contended that educational institution is an established one and they were required to notify vacancies in view of sub-section (2) of Section 4 of the Act. To repel this argument of Mr. Raval, Mr. Shah has relied on sub-section (2) of Section 3 of the Act. Clause (a) of sub-section (2) of Section 3 of the Act(relevant portion) reads as under:

" Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf this Act shall not also apply in relation to:

(a) Vacancies which are proposed to be filled.....on the result of any examination conducted or interview held by or on the recommendation of any independent agency such as the Union or a State Public Service Commission and the like.....

Mr. Shah contended that the respondent-institution is a Secondary Education School

and the same is governed by the Gujarat Secondary Education Act, 1972. Mr. Shah contended that Chapter VI of that Act provides for provision relating to service in registered private secondary schools. Section 35 of that Chapter provides such schools to have Selection Committee. Section 35 of the Gujarat Secondary Education Act, 1972 reads as under:

"35. (1) For every registered private secondary school there shall be following to committees, namely

(a) a school staff selection committee for the purpose of recruiting the teaching staff of the school other than the head master,

(b) a special school committee for the purpose of recruiting the head-master, and for the purpose of the initial recruitment of the headmaster and the teaching staff of a school started after the appointed day.

(2) The school staff selection committee shall consist of the following members, namely:-

(i) Two representatives of the management of the school to be nominated by the management;

(ii) The headmaster of the school;

(iii) In the case of a school the total number of teachers in which is more than six, two teachers to be elected by the teachers of the school from amongst themselves, and in the case of a school the total number of teachers in which is or is less than six, one teacher to be elected by the teachers of the school from amongst themselves; and

(iv) One representative of the Board to be nominated by the Board.

(3) The special school committee shall consist of the following members, namely:-

(i) Two representatives of the management of the school to be nominated by the management.

(ii) Two representatives of the Board to be nominated by the Board.

(4) Subject to the provisions of sub-section (1) of section 34, the school staff selection committee or, as the case may be, the special school committee shall select persons for appointment as teachers of the school from amongst the regulations made in this behalf:

Provided that for the purpose of such selection preference shall be given to a protected teacher, if he is otherwise eligible.

(5) The special school committee shall select persons for appointment to the post of headmaster of the school from amongst persons referred to in sub section (4) or from amongst the teachers in the school:

Provided that for the purpose of such selection, preference shall be given to a senior teacher serving in the school or schools under the same management, if he is otherwise eligible and suitable.

(6) Whenever the persons from amongst whom a teacher or a headmaster is to be selected includes a person who is related to any member of the governing body or other body in charge of the management of the school or to any member of the school staff selection committee or, as the case may be, the special school committee, the member concerned of such committee, shall disclose the fact of such relationship to the members of the Committee and if any such person is selected by the Committee, his selection shall be subject to approval by an officer of the Board authorised in that behalf. Such approval shall be sought by the Committee within a week from the date of selection of the persons concerned and the authorised officer of the Board shall communicate his decision within fifteen days from the date of receipt of the reference by him.

(7) Any appointment of a head master or a teacher made in contravention of the provisions of this section shall be ineffective."

It is clear on reading Section 35 that there is a special procedure for appointment of a Teacher in a registered private secondary school. Any appointment in breach thereof is bad in law. In view of this provision of Section 35 of the Act, Mr. Shah contended that, that satisfies the requirement of clause (a) of sub-section (2) of Section 3 and that Selection Committee falls within the purview of an independent

agency like UPSC & GPSC. Clause (a) of sub-section (2) of Section 3 when refers to a Union or a State Public Service Commission is by way of illustration and it is not exhaustive thereby. To support the same, the very section provides for the words " and the like". Thus, to vacancies which are proposed to be filled on the recommendation of any independent agency, the Act does not apply. The case of Mr. Shah stands on a better footing in view of the fact that the alleged agency for recruitment is a statutory agency. It is not a private agency and the fact of non compliance thereof has its own implication leading to declaration of appointment to be an illegal one. In view of this fact, when the Act does not apply, the prosecution for breach of any of the provisions of the Act also is bad and the accused is liable to be discharged under the said complaint. Thus, I do not find any reason to interfere with the order passed by the learned Magistrate and the appeals are liable to be dismissed and are hereby dismissed.

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